Supreme Court, U.S.
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No._____

In The Supreme Court of the United States

IN RE: ELLEND DUNN

Petitioner

v.

FRANCIS J. HARVEY

Respondent

On Petition For Writ of Mandamus
To the United States Federal Court
For The Federal Circuit

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED IN THIS PETITION FOR A WRIT OF MANDAMUS

(1) Whether the United States Court of Appeals, Federal Circuit, erred when it would not provide a signed opinion in response to two formal requests by the plaintiff so that the petition could be procedurally reviewed by the Supreme Court.

(2) Whether the United State Court of Appeals, Federal Circuit is interfering with the Supreme Court's appellate jurisdiction in refusing to have the judge sign the opinion as specified in guidance.

(3) Whether the Supreme Court should allow the United States Court of Appeals, Federal Circuit, to establish itself as the final appellate review authority, when it refuses to comply with requests for signed orders for Supreme Court review, in employment cases by African-Americans in violation of their 5th amendment constitutional rights to due process.

(4) Whether the Federal Appeals Court Federal Circuit and the subordinate Merit Systems Protection Board (MSPB) can authorize global jurisdiction on settlement matters with other Federal Circuits and their subordinate courts without a waiver or transfer of rights filed with the MSPB and courts by the plaintiff or her attorney.

(5) Whether the Federal Appeals Court Federal Circuit and the subordinate MSPB can endorse as a jurisdictional or non-jurisdictional matter a settlement agreement that authorizes use of federal taxpayer dollars to pay for punitive conduct in sexual harassment, hostile work environment, and employment discrimination.

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

All parties to the case are contained on the front cover of the petition.

According to Supreme Court Rule 29(6) a plaintiff who was a government employee is not required to file a corporate disclosure statement. The plaintiff in this case contends that he was a government employee employed by a federal agency.

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STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

(1) The Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 2072 in that the Court shall have the power to prescribe general rules of practice and procedure for cases in the United States district courts and court of appeals.

(2) The Court has jurisdiction of this appeal according to Article III, Section 1, Section 2(1), 2(2) and Amendment 5 of the United States Constitution.

The primary question before the Court is whether the United States Court of Appeals for the Federal Circuit should be required to render a signed judgment order/opinion issued August 31, 2005 by Chief Judge Michel (App. 1-a) when formally requested by the plaintiff in order to appeal to the Supreme Court and whether the refusal represents a violation of my 5th amendment rights and a violation of the Supreme Court's right to final appeal. The Supreme Court issued guidance on unsigned opinions for 2003 and 2004 in Pet. App. 3-a and Pet. App. 4-a respectively. The plaintiff delivered a letter requesting a copy of a signed judgment dated September 1, 2005 as Pet. App. 5-a. to the appellate court. On September 6, 2005 the United States Court of Appeals for the Federal Circuit sent a letter (Pet. App. 7-a) in which it states "There is no authority requiring a judge's signature to appear on an opinion. Your case was decided per curiam by a panel of judges on its merits. Therefore, your submissions are being returned without action." However, a review of the official court records on Pet. App. 8-a under Public Access Court Electronic Records (PACER) did not acknowledge that my letter was filed with the court requesting a copy of the signed opinion or a response was issued by the court.

Therefore a motion (Pet. App. 9-a) was filed dated September 8, 2005 requesting the correction of the court record to acknowledge receipt of my letter requesting the ruling denial be signed the response, while also confirming that the Federal Appeals Court Federal circuit was denying me a signed opinion/judgment so that I could exercise my 5th amendment rights to appeal to the Supreme Court. I filed the motion by faxing through a commercial carrier and postal service to ensure that there was a proper independent record of receipt. The record was corrected and the motion acknowledged in the official court record. However, the Federal Appeals Court Federal Circuit has been steadfast in refusing to provide a signed copy of their ruling, has refused to acknowledge the Supreme Court's authority to request a signed judgment for appellate review, or my right under the 5th amendment due process clause of the U. S. Constitution to an appeal to the Supreme Court. I am an African-American whose rights under the U.S. Constitution were encoded in Title VII to the Civil Rights Act of 1964, which stipulates that I have the right to equal employment opportunity and to litigate discrimination which violates those rights based on race. This ruling is part of that process.

Title 28 of The United States Code § 1254 provides

> "Cases in the court of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. "

This gives me the authority to file with the Supreme Court. Appellate jurisdiction has been conferred upon the Supreme

Court by various statutes, under authority given Congress by the Constitution. The basic statute controlling the jurisdiction of the Supreme Court in this matter is found in Title 28 of the United States Code §1251. The Supreme Court issued guidance in Pet. App. 3-a and Pet. App. 4-a,, that advised the subordinate courts of the preponderance of opinions that are being returned without comment because they are unsigned. The plaintiff believes that the rulemaking power conferred on the Supreme Court by Congress in Title 28 United States Code § 2071 and 2072 gave it authority to direct appeals court to sign unpublished opinions, to enable parties to appeal rulings to the Supreme Court. The plaintiff has been denied that right by the appeals court.

The unsigned order also raises issues of global jurisdiction, which should be addressed by the Supreme Court. It is clear from the MSPB complaint issues (Pet. App. 12-a), PACER federal court docket (Pet. App. 24-a), and MSPB Volume 3 Docket (Pet. App. 43-a) that parties were both the MSPB and federal Court were processing MSPB issues at the same time, that were jurisdictionally separate and are prohibited under Title 28 USC §1331 and §4324. Neither the plaintiff nor the plantiff's attorneys entered any documentation in the MSPB or federal court record waiving the plaintiffs' rights. The appellate court in this case is trying to establish itself as the final level of appellate review for issues under which only the Supreme Court has jurisdiction. Since there is no global jurisdictional authority, the MSPB had no authority to dismiss her complaint based on a settlement.

The plaintiff is relying on a writ of mandamus for these reasons:

(1) The plaintiff's petition requests that the Court exercise its supervisory power on whether the United States Court of Appeals for the Federal Circuit has an obligation to complete the judicial process and render a signed judgment

order/opinion from the United States Court of Appeals for the Federal Circuit to the plaintiff. The plaintiff requested a signed judgment order/opinion from the United States Court of Appeals for the Federal Circuit on two occasions. The response received from the Appeals Court refusing to provide a signed order for Supreme Court appeal is not consistent with the Supreme Court guidance.

(2) The Federal Appeals Court Federal Circuit did not address my request to support a Supreme Court requirement to appeal; and (3) The Federal Appeals Court Federal Circuit did not respond to my motion. This action also shows that the U.S. Appellate Court is holding the Supreme Court in contempt. The United States Federal Appeals Court Federal Circuit Court must defer to the United State Supreme Court for final appellate review. Since I acknowledged that I am requesting the signature compliant with the Supreme Court requirement, the appellate court's failure to provide the needed signature denies my 5th amendment right to due process.

BACKGROUND

Ellen Dunn is an African American female former employee of the Department of the Army. Ellen Dunn was terminated after filing as class agent in federal court in 1998 and an EEOC fact-finding hearing findings adverse to the Army in individual charges of sexual harassment and reprisal. Ellen Dunn filed a temporary injunction in the United States District Court in Norfolk, Virginia to block the termination action until the class complaint trial could be litigated. However, Federal Judge Friedman did not issue an injunction blocking the termination. Ms. Dunn sought to litigate the termination action through the Merit Systems Protection Board (MSPB), while the class action for systemic patterns of discrimination against the Department of the Army, Training and Doctrine Command, was litigated in the U.S. District Court of Norfolk, Virginia. They were separate and distinct issues litigated under two separate judicial jurisdictions.

A trial verdict was rendered in Ellen Dunn's favor, prior to a final ruling by the MSPB on termination, which found discrimination in a promotion and harassment in pre-termination acts. The federal court did not consider termination in its verdict as it was filed under separate and independent jurisdiction with the MSPB based on complaint issues in Pet. App. 12-a. Instead of the MSPB rendering a ruling in Ms. Dunn case involving Louis Napoleon and Colonel Smith based on the jury verdict, evidence, and testimony from the Dunn federal trial retaliations, the MSPB dismissed the case based on a settlement arrangement negotiated outside its jurisdiction and for which the remedies did not address injuries inflicted on Ellen Dunn resulting from the termination. Ellen Dunn had no immediate knowledge of its actions. After making several unsuccessful efforts to get access to documentation from the Justice Department and Department of the Army, Ellen Dunn received a document through a private attorney, (Pet. App. 44-a) indicating that the MSPB, Army, and Justice Department agreed

to dismiss the MSPB termination charges, without compensation for termination abuses. This letter was dated after a jury verdict, which found senior Army military officials and senior management officials of harassment and discrimination. Clearly the agency and the Justice Department acted in violation of Ellen Dunn's rights to due process because neither she nor her attorney provided written documentation in the dockets that waived her rights. Two judicial organizations that are separately jurisdictionally by statute are involved in processing the same MSPB issue simultaneously within a few days of a guilty jury verdict.

There is no indication in the court docket shown as Pet. App. 24-a, MSPB docket excerpt shown as Pet. App. 43-a or settlement agreement shown as Pet. App. 46-a, that the MSPB had any jurisdictional or legal authority over the federal district court case or that the Federal Appeals Court Federal Circuit has jurisdictional authority over Fourth Circuit Federal District Court settlement. There is no language in the district court's settlement agreement that indicates that it covers any issues, other than promotion discrimination and harassment against Ellen Dunn and promotion discrimination against Richard Reaves. The Appeals Court has failed to indicate under what statutory authority they refuse to sign the order, when the statutory authority for requesting the order was given More disturbing is the fact that the appeals court does not acknowledge the Supreme Court's right to final appeal.

There is no authority under the United States Code that allows for the global settlement of two separate and distinct set of allegations by the MSPB and the US District Courts as they are jurisdictionally separate. Further, the United States Court of Appeals does not have global jurisdiction to rule on a settlement agreement that is under the jurisdiction of the fourth Circuit. Therefore, it is important to have the judge's signature on this order to seek review by the Supreme Court, who is the only court that has jurisdiction to review this matter. The Supreme